

Congress of the United States
Washington, D.C. 20515

January 31, 2022

Brian Nichols
Assistant Secretary of State
Bureau of Western Hemisphere Affairs
U.S. Department of State
2201 C Street, NW
Washington, D.C. 20520

Peter Natiello
Acting Assistant Administrator
Latin America and Caribbean Bureau
U.S. Agency for International Development
1300 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Assistant Secretary Nichols and Acting Assistant Administrator Natiello:

We are writing to draw attention to the concerning operating environment for civil society organizations (CSOs) in Central America. We applaud the Biden-Harris administration's emphasis on partnering with civil society in El Salvador, Guatemala, and Honduras to promote human rights, anti-corruption, democracy, and sustainable development within the region and USAID's stated commitment to direct 25% of U.S. government assistance to local development partners over the next four years.¹ However, we are concerned that recent proliferation of legislation restricting legitimate activities of civil society will directly impede the ability of the United States government, and the broader international community, to partner with civil society safely and effectively to conduct legitimate operations.

Specifically, we are concerned that legislation proposed or enacted in El Salvador, Guatemala, and Honduras will impact our efforts to promote community-led development and support a more democratic, prosperous region; this legislation should be considered an obstacle to our bilateral cooperation. Within the Northern Triangle region, civil society is often our most trusted partner. The United States must elevate amending or repealing harmful legislation restricting legitimate civil society activity as a key bilateral and regional policy priority while simultaneously continuing to partner with and protect CSOs carrying out critical work.

In Guatemala, civil society organizations have begun to feel the impacts of changes to the Law on Non-Governmental Organizations for Development, which the Guatemalan government implemented in August 2021.² The law could be used to criminalize human rights defenders and CSOs by imposing new registration requirements on CSOs that receive foreign funding. Specifically, the law prohibits CSO use of foreign funding for "activities that alter public order in

¹ USAID, *Administrator Samantha Power on A New Vision for Global Development* (Nov. 4, 2021), <https://www.usaid.gov/news-information/speeches/nov-4-2021-administrator-samantha-power-new-vision-global-development>.

² International Center for Not for Profit Law, Guatemala - ICNL (Sept. 2021), <https://www.icnl.org/resources/civic-freedom-monitor/guatemala>.

national territory.” According to the law, an organization that violates this provision will immediately lose its legal personality and its members are prohibited from joining any other CSO for no less than two years. What constitutes “altering public order” is undefined, raising significant implications for freedom of association and assembly. Under the law, CSOs are required to formally register by February 2022. CSOs attempting to comply with registration requirements report an opaque and at times arbitrary process. Disconcertingly, there is no registration category to include CSOs that are specifically mandated to carry out human rights reporting and advocacy, causing concern among human rights CSOs that their registration may not be approved or that they may need to significantly alter their operations. **We urge the Biden administration to immediately call for the government of Guatemala to clarify the CSO registration process and ensure all categories of CSO work, including human rights reporting and advocacy, are lawful in the country. We urge the Biden administration to sustain engagement with the government of Guatemala to encourage repeal of harmful aspects of the Law on Non-Governmental Organizations.**

On November 9, 2021 the Salvadoran administration of Nayib Bukele proposed the Foreign Agents Law.³ If enacted, the law will require CSOs that receive foreign funding to register as “foreign agents.” The law would prohibit registered organizations from any political activities perceived to be a threat to public order or “endanger or threaten national security” or the “social and political stability of the country.” The law would also give broad discretionary authority to the Executive branch to fine, press criminal charges against, and revoke operational licenses of any CSO it determines is not in compliance with the law. The law would also impose a 40 percent tax on funding received by these organizations. After public criticism of the law’s potential impacts, the Bukele government thankfully tabled it after significant international pressure, including the decision of the German government to temporarily suspend its foreign aid decisions in response to the proposed law. This development shows that coordinated diplomatic engagement can have a positive effect on the operational environment of CSOs. However, civil society in El Salvador continues to report instances of harassment and has expressed concern that the Foreign Agents Law could be re-introduced in an altered but still harmful form. **We urge the Biden administration to continue robust engagement with the Bukele government and communicate that open civic space is a key bilateral priority.**

A series of congressional decrees signed into law in Honduras in November 2021 infringe on the freedom of assembly and opinion, make it more difficult for prosecutors to open investigations into suspected money laundering cases, and create more barriers for CSOs to open and maintain local bank accounts while increasing their risk of prosecution for legitimate acts of expression and assembly.⁴ The incoming Castro government provides the Biden administration with the opportunity to promote fundamental rights and the importance of civil society for a robust democracy. We are encouraged that President-elect Castro has committed to protecting the rule

³ Marcos Aleman and Christopher Sherman, *‘Foreign’ agents pitch has El Salvador civil society on edge*, ABC News (Nov. 17, 2021), <https://abcnews.go.com/International/wireStory/foreign-agents-pitch-el-salvador-civil-society-edge-81228276>.

⁴ Jennifer Avila, *Pandora Papers prompt Honduran Congress to increase their impunity*, Contra Corriente (Oct. 7, 2021), <https://contracorriente.red/en/2021/10/07/pandora-papers-prompt-honduran-congress-to-increase-their-impunity/>.

of law and human rights and hope repealing these laws will be a focus for her new administration. **We urge the Biden administration to encourage President-elect Castro to publicly support the work of CSOs and denounce legislation or efforts that would endanger their work. Further, we urge the Biden administration to encourage the new Castro administration to work with the legislature to revise and repeal these laws and provisions.**

In consultation with civil society and local organizations, we share their concerns that these new laws reflect a global and regional trend of closing civic space and will impede U.S. government efforts to support the people of the region. We have seen this play out in Nicaragua with the impact of the Foreign Agents Act passed by the Nicaraguan government in October 2020, which cancelled the operational licenses of more than 50 Nicaraguan CSOs, as well as six international organizations, including those providing humanitarian services to migrant communities, delivering COVID-19 assistance, supporting LGBTQ communities, and engaging in anti-corruption and gender justice work.⁵ Civil society leaders caution that tactics used by the Ortega regime are being replicated elsewhere in the region, especially as it relates to the Northern Triangle. We cannot stand idly by while authoritarian tendencies attack the limited remaining credible, democratic space operating in the country.

Considering these developments, we urge the Department of State and the United States Agency for International Development (USAID) to prioritize the protection of civil society in our bilateral relationships with the governments of Guatemala, El Salvador, and Honduras, including through advocating for greater consultation with civil society and asking for clarity around the details of the laws addressed above and their implementation. **We ask the Department of State and USAID to urge each government to review and work with legislatures to revise and repeal any laws and provisions that limit the ability of civil society organizations to carry out their legitimate activities.**

In addition, we urge State and USAID to:

- Consider all flexible and creative legal options for financing and protecting civil society organizations operating in closed and semi-closed contexts;
- Establish guardrails for flexible and responsive funding to counter potential attacks against CSOs and protect U.S. assistance;
- Create mechanisms for civil society to continue to do its work in closing spaces, including collaboration with U.S. government agencies and other international partners;
- Consult with CSOs to investigate how the proposed and enacted regulations impact the ability of USAID-implementing partners to access funding and conduct their operations, and to what extent they will impact USAID's ability to direct 25% of assistance to local partners; and
- Submit a public response outlining State and USAID's engagement with the governments reflecting that support for functioning civil society is primary to our policy interests and will impact other foreign assistance and coordination.

⁵ Ismael Lopez, *Nicaraguan government cancels registration of six foreign NGOs*, [Reuters](https://www.reuters.com/world/americas/nicaraguan-government-cancels-registration-six-foreign-ngos-2021-08-16/) (Aug. 16, 2021), <https://www.reuters.com/world/americas/nicaraguan-government-cancels-registration-six-foreign-ngos-2021-08-16/>.

Thank you for your strong actions and progress thus far in this challenging landscape. We must protect the critical work of civil society now, before the forces threatened by advocacy and transparency eliminate those who carry the mantle of democracy. We stand ready to support you from Congress.

Sincerely,



Norma J. Torres
Member of Congress



Edward J. Markey
United States Senator



Joaquin Castro
Member of Congress



James P. McGovern
Member of Congress



Nanette Diaz Barragán
Member of Congress



Adriano Espaillat
Member of Congress



Juan Vargas
Member of Congress



Dina Titus
Member of Congress



Raúl M. Grijalva
Member of Congress



Andy Levin
Member of Congress



Alexandria Ocasio-Cortez
Member of Congress



Antonio Cárdenas
Member of Congress



Lucille Roybal-Allard
Member of Congress



Mark Pocan
Member of Congress



Jesús G. "Chuy" García
Member of Congress



Jimmy Gomez
Member of Congress



J. Luis Correa
Member of Congress



Benjamin L. Cardin
U.S. Senator

CC: Ricardo Zuniga, Principal Deputy Assistant Secretary and Special Envoy for the Northern Triangle, Bureau of Western Hemisphere Affairs, Department of State
Michael Camilleri, Senior Advisor to the Administrator and Executive Director, Northern Triangle Task force, U.S. Agency for International Development